

Standard Terms of Sale

1. **Supply on terms:** In consideration of Dunnett & Johnston Group Pty Limited ACN 084 956 525 a company duly incorporated in Australia (“we” “our” or “us”) agreeing to supply you with frozen and chilled meat and meat products, whether or not with specific packaging you may request (“goods”), you agree that the terms set out in:
 - a. the **Confirmation of Sale** provided to you in relation to the specific goods to be supplied to you (“**COS**”);
 - b. the terms of any specified Incoterms 2010 (“**Incoterms**”);
 - c. any formal written trading agreement governing all or substantially all of our trading arrangements that is duly executed by, and binding on the parties; and
 - d. these Standard Terms as they may be amended by us from time to time and as published by us on our website at www.dunnett-johnston.com.au;(in that order of priority, to the extent of any inconsistency) comprise all the terms of your **whole and entire agreement** with us (“the **Agreement**”).
2. **Vary quotes and price lists:** We may invite you to offer to purchase goods from us by sending you quotations or price lists that include pricing and specifications. Normally the invitations are current for 24 hours; however, we may alter or withdraw them, without notice to you, at any time. If you wish to proceed, you may contact us to place an order, but no binding contract will arise unless or until we have negotiated a sale and issued a COS to you.
3. **Pricing:** The agreed price, quantity and specifications for goods we are to supply to you are normally set out in the COS. Please note however that:
 - a. We make all reasonable endeavours to ensure that the precise quantity of goods specified in the COS is delivered. At times, however, we are unable to procure the supply of that exact quantity. Even if the quantity of the goods we supply varies from the quantity specified in the COS, you must still accept the delivery of those goods and you pay the price set out in the COS for the goods, adjusted pro-rata to take into account the changed quantity.
 - b. If we are unable to supply you with the goods specified in the COS for any reason, normally we will discuss this with you and we will seek to offer you an alternate specification that might suit you; where that is acceptable to you, we will, normally, cancel the sale and issue a fresh COS to you. Failing that, and in any event, we may cancel the sale of the goods to you by giving notice to you. Your rights in respect of goods supplied but not conforming to the specifications in the COS are limited to your making a claim as set out below in clause 12.
 - c. It would be extremely unusual for us to seek to vary prices after the COS has issued, however in the unlikely event that our underlying costs increase significantly after we have issued the COS and before delivery, particularly with regard to underlying rises in oil costs, increases in freight, shipping, storage, demurrage, insurance, imposts and taxes, or any force majeure event, we reserve the right to vary the price, but only so far as is necessary to cover any increases in underlying costs in connection with the supply of the goods to you.
 - d. Our prices do not include, and you must pay, all and any federal, state or local, use or other taxes with respect to the sale by us or the purchase by you of goods, or their use, receipt or shipment, including without limitation any goods and services tax (“GST”) that may apply.

- e. Our pricing is based on the delivery of the goods to the nominated port or address, set out in the COS (“the **destination**”). If, at your request, we agree to deliver the goods on a different date, to a different destination, or in any different way – for example, by instalments or using your favourite shipper or on account of a force majeure event (“**agreed alternate delivery**”), you must also pay for all and any additional costs and expenses connected with your request.
4. **Incoterms:** Usually the Incoterm that is to apply to a transaction will be specified by its usual abbreviation in the relevant COS. If not, however, then for domestic deliveries within Australia, the Incoterm is DAP and for deliveries outside Australia, the Incoterm is CFR.
5. **Payment:** Payment must be made by you to us in clear funds in the amount, manner, currency and time frame set out in the COS, the amount being adjusted pro-rata as may be advised by us to you to allow for any variation in quantity plus any other amount due to us under the Agreement (“**due payment**”):
- a. when the goods are in transit and before the **delivery** of the goods to the destination set out in the COS or as per any agreed alternate delivery;
 - b. immediately upon the **first time** we email to you a scanned set of **copy documents** in respect of the goods, that is, our commercial invoice (or within Australia, tax invoice) and to the extent applicable, the tally sheet, the bill of lading and the health certificate for the goods. You must not make us wait for payment on any account or for any reason, including without limitation, your seeking any change to be made by us to the documents.
6. **Import documents:** Where we are exporting goods from Australia we are only obliged to provide you with the Bill of Lading and the Health Certificate and other agreed documents and you must obtain all other import permits, government approvals and other documents necessary for the import of the goods into the destination country or agreed alternate delivery place. You will not suspend, defer or withhold your payment to us on any account; including without limitation, on account of any other documentation requirements or problems you may have in securing such permits, approvals or other documents. Normally, we will however, seek to work co-operatively to assist you if we can.
7. **Currency:** Where an amount set out in a COS is due in a specified currency the due payment must be paid in that currency (or if none is specified, in Australian Dollars) regardless of any fluctuations in the currencies of other countries and regardless of the time or date of payment.
8. **Delivery:** You must accept delivery at the destination set out in the COS or the agreed alternate delivery place immediately upon delivery. If delivery is to take place at an address within Australia, you are responsible for work health and safety at the delivery destination. We will take all reasonable steps to deliver all the goods referred to in the COS at the one time; however we may, in need, deliver them by instalments, in which case, even if an instalment is not delivered or is delivered late, you cannot cancel the Agreement either wholly or in respect of any particular instalment or subsequent instalments yet to be delivered.
9. **Retention of Title:** Title to the goods will not pass to you until you have made due payment for the goods. Until due payment, you will hold the goods (or if sold, the proceeds of sale, or if the subject of an insurance claim, the proceeds of that claim) on trust for us, keeping them separate

from your other goods or moneys and in the case of goods, stored properly and in accordance with all food safety standards, so that they are maintained in good condition.

10. **Default:** You are in default under this Agreement if you:

- a. do not accept delivery when the goods arrive at the delivery destination set out in the COS or the agreed alternate delivery place;
- b. do not make due payment on time;
- c. you are or become insolvent - that is, you do not pay, or are unable to pay, all your debts as and when they fall due under any relevant invoice, any step is taken to **liquidate** you (see clause 20 for the definition of liquidate), or you cease to trade or exist; or
- d. you default in the performance or observance of the Agreement and you do not remedy such default immediately upon notice by us to do so.

11. **Remedies on default:** We will normally discuss the default with you with a view to resolving the matter. However, in the event of a default under clause 10, where we consider it appropriate we may (at such times and in such manner as we think fit) do all or any of the following, without any prior or other notice to you:

- a. we may in our absolute discretion allow some additional time, for example, from 24 hours to one week, where in our view there is a reasonable excuse for late payment, for example, on account of public holidays at the destination, but doing so does not affect any other rights and remedies of ours;
- b. we may require you to deliver to us a letter of credit for the outstanding sum and you must do so within 24 hours of our request;
- c. we may re-sell all or any goods in connection with which there has been a default or any other goods sold or to be sold to you, to a third party and charge you the difference between the due payment and the re-sale price of the those goods, if the re-sale price is the lower;
- d. we may charge you for any loss, lack or spoiling of, or in relation to, the goods or freight, shipping, storage, demurrage, insurance, imposts and taxes or other expenses arising from your default, but to the extent we have re-sold the goods for more than the due payment, we will normally cover such expenses;
- e. we may set off any amount that we actually or contingently owe you against any amount that you may actually or contingently owe us;
- f. we may cease to supply any further goods to you (including without limitation, any goods in respect of which a COS has been issued by us to you);
- g. we may determine that all or any amounts due by you to us but not yet payable are all immediately due and payable;
- h. we may take any step we consider fit to prevent the goods from being removed from our possession or control and/or to re-possess or re-take control of the goods, including without limitation, to enter into any premises where the goods are located for that purpose;
- i. we may disclaim all or any goods if, after delivery (including, without limitation, where you have not accepted delivery or where the title has not passed) the goods become, in our opinion as a consequence of your default, either spoiled or otherwise unsuitable for sale, in which case you must pay the full invoice price for such goods to us and you must do whatever is necessary to dispose of such goods properly at your own cost and expense;

- j. we may if you have sold the goods to a third party, or obtained payment of an insurance claim in respect of the goods, trace the proceeds of the sale and/or the proceeds of any insurance claim in respect of the goods, all of which proceeds are charged in our favour as security for the due payment;
 - k. we may register our Agreement as a purchase money security agreement and/or a general security agreement under the Personal Property Securities Act 2009 (Commonwealth of Australia "Cth") on the basis we agree that sections 95,96, 121(4), 125, 130, 129(2), 129(3), 132(3)(d), 132(4), 135, 142 and 143 of that legislation do not apply to this Agreement; and further, you agree to do all things and sign all documents necessary or incidental to the perfection, registration or enforcement of any security granted pursuant to this Agreement promptly upon receipt of our written request for you to do so;
 - l. we may, if the goods cannot be promptly re-sold, appoint a receiver and manager to any or all of your property which you hereby charge in our favour as security for the due payment, with such receiver and manager having all the powers of a receiver and manager under the Corporations Act 2001 (Cth);
 - m. we may act as your duly appointed attorney (and you hereby appoint us to act as such including without limitation, by way of security) with power to do anything you may or must do under this Agreement and to do anything we consider fit for any purpose associated with the perfection, registration or enforcement of any security granted pursuant to this Agreement or for the possession, control, recovery or re-sale of the goods and/or any due payment ;
 - n. we may take any other legal and/or recovery action that we consider fit for the purposes of enforcing this Agreement or exercising our legal rights;
 - o. we may charge you for our legal, recovery or any other losses, costs or expenses incurred by us arising from your default;
 - p. we may combine the due payment and any other amount we may charge you or that you owe us on any account whatsoever, and we may charge interest on the total from time to time at the flat rate of 3% above the Reserve Bank of Australia Cash Rate as published on its website from time to time, calculated and charged daily ("the Rate") from the time when the amounts fall due or payable until the time the amount is actually received by us in clear funds;
 - q. we may, or we may not have our usual company accountant, calculate and certify the amount due by you to us from time to time and such certification will, in the absence of any manifest error, be conclusive evidence and will be final and binding upon you as to the calculation of and the amount due to us by you.
12. **Claims:** Notwithstanding anything in this Agreement, claims by you against us are limited to claims that are made under and in accordance with this clause 12.
- a. You may only make a claim against us (and may not make any other claim of any nature or kind or on any other account) where:
 - i. your claim only relates to goods supplied by us to you and not conforming to the specifications set out in the COS;
 - ii. your claim is for no more than the difference between the value of the goods of the specification actually supplied to you by us and the value of goods that would conform to

the specification (as described in the COS and subject to adjustment for any difference in quantity) (“Valuation Sum”);

- iii. your claim is given to us in writing within 7 days from the earliest of the day when you first were (a) aware of the non-conformance (b) entitled to inspect the goods, or (c) on notice of facts, which, if investigated, would have made you aware of the non-conformance;
 - iv. your claim is accompanied by all evidence upon which you rely in submitting your claim, for example, photographic evidence, tally sheet etc.; and
 - v. if you are in Australia, as a part of the claims process, you will give us as much opportunity as we may request in order to personally inspect the goods.
- b. You must co-operate fully in the assessment of your claim, including providing further information promptly at our request. You agree you will not deduct the amount of your claim from any amount due to us, nor suspend the performance of any obligations you have to us, or take any other action against us or in respect of the goods or this Agreement, pending the resolution of the matter and our prior written agreement to such set-off, suspension or action.
 - c. Upon receipt of notice of a valid claim, we will promptly discuss your claim with you. If any valid claim is not resolved through discussions with you, we will, as soon as practicable after receiving sufficient information about your claim, send an email to you giving you notice of our assessment of the Valuation Sum.
 - d. If the parties cannot agree to a value of any valid claim of yours within 7 days of our notice to you, and you wish to press the matter, you will refer your claim to a generally accepted inspection, verification, testing and certification services provider such as SGS or Bureau Veritas (“the inspector”) together with your evidence in support of your claim, to request their written determination of the correct Valuation Sum. The parties will co-operate with each other and with the inspector and agree to be finally bound by the determination of the inspector in respect of the Valuation Sum.
 - e. If the inspector determines that the Valuation Sum is higher than our assessment of the Valuation Sum (as per our notice to you, or such other sum as we may have offered to pay you in advance of your referring the matter to the inspector) we will pay the costs of the inspector but if not, you will pay the costs of the inspector.
 - f. The parties will co-operate by promptly making any relevant payments or adjustments in accordance with the Valuation Sum as agreed, or as determined by the inspector, which upon such payment or adjustment will be deemed paid and adjusted in full and final satisfaction of, and you indemnify and hold us harmless in respect of, your claim and any circumstances connected with your claim and you will make no further or other claim of any kind in relation thereto.

13. Jurisdiction and Dispute Resolution: This Agreement is governed by the laws of the State of New South Wales, Australia (“NSW”) and the parties agree to submit to the non-exclusive jurisdiction of the Courts of NSW and to waive any rights to a claim that such Courts are an inconvenient forum for the purposes of the resolution of disputes arising in connection with this Agreement. Where the parties are in dispute over a matter unrelated to a claim under clause 12, a party may upon notice to the other party, refer the matter for a mediation in accordance with the Australian Commercial Disputes Centre (ADCD) Mediation Rules (with all mediation

costs to be shared equally between the parties), provided always that a party may file for orders for injunctions and/or specific performance or other urgent equitable remedies at any time. If the dispute is not settled at such mediation either party may then take legal proceedings in any of the Courts of NSW.

14. **Credit:** We do not normally provide credit. However, in exceptional circumstances we may agree to set up an account for you on terms that include these Standard Terms except that (a) payment must be made strictly within 7 days of the invoice date, and (b) any default in such payment is also a default pursuant to clause 10 in respect of which, in addition to the things we may do under clause 11, entitles us to cancel your account without notice.
15. **Data:** You must supply us accurate data and specifications upon which we may rely and you will indemnify and hold us harmless against any liability we may incur in connection with any error or omission on your part that leads or contributes to food being falsely described within the meaning of the Food Act, 2003 NSW. We may correct any errors or omissions in documents and we may, with your specific prior written approval, alter documents on your behalf.
16. **Corrupt Practices:** You will not engage in any corrupt practice or fraudulent practice with respect to any transactions involving us. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official and "fraudulent practice" means a misrepresentation of facts in order to influence the conduct of any person. Notwithstanding anything in this Agreement, if you do so causing loss or expense, your liability to us is unlimited.
17. **Limitation on liability:** If you do not proceed with or pay for your purchase of all the goods described in the COS we may suffer significant loss or damage and in that event you acknowledge that your liability to us includes losses and expenses actually incurred by us arising directly from your breach including any loss, lack or spoiling of, or in relation to, the goods, freight, shipping, storage, demurrage, insurance, imposts and taxes, legal and recovery costs. In so far as is permissible by law and except in the case of a **Consumer** within the meaning of the Australian Consumer Law or similar legislation, the parties indemnify and hold each other harmless from and against, and release each other from any other liability (whether in contract, tort [including negligence] or otherwise) for loss of profits or other indirect or consequential losses or any special, punitive or exemplary damages. If you are a Consumer, our liability to you is limited to the replacement of the goods, the repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods, or payment of the costs of repairing the goods.
18. **No assignment:** You must not assign your obligations under this Agreement to any third party (or do anything whereby control over you passes from those currently in control of you to any third party) except with our prior written consent. Our consent may, in our discretion, be refused, given, or given on conditions including without limitation that any such third party agrees in writing to be bound by this Agreement as if a party to it, in such form as we consider appropriate.

19. **Miscellaneous:** In respect of this Agreement: any provisions or any parts of provisions that are invalid or unenforceable may be severed without any effect on the validity or enforceability of its other provisions; no delay or failure to act or enforce these provisions will operate as a waiver of any rights under any provisions, and these provisions bind the parties and their respective successors and permitted assigns. Any notices may be given by email to the last known email address of the person last handling the matter for the other party with an email copy sent to the email address shown on the other party's website or letterhead. Documents relating to any claim, mediation or legal action will be validly given if a copy is also faxed to the other party's facsimile no. as shown on their website or letterhead.

20. **Definitions and Interpretation:** In this Agreement:

- a. **force majeure** means war or any major destruction or disturbance on account of an act of terrorism, riot, strike, fire or natural disaster;
- b. a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- c. where a party to this Agreement comprises more than one person and/or entity, this Agreement binds each of them severally and all of them jointly;
- d. a reference to liquidate includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration (as defined in Section 9 of the Corporations Act 2001 (Cth)), being subject to administration and the occurrence of anything analogous or having a substantially similar under the law of any applicable jurisdiction and to the procedures, circumstances and events which occur in connection with any of them;
- e. the singular includes the plural and vice versa;
- f. headings, italics and text being in bold are for convenience only and do not affect interpretation, and
- g. where an expression is defined anywhere in this agreement it has the same meaning throughout.